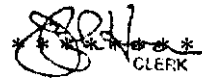


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
NOV 15 2006


CLERK

*
UNITED STATES OF AMERICA, * CR. 06-40081
*
Plaintiff, *
*
vs. * REPORT AND RECOMMENDATION
* ON DEFENDANT'S CHANGE
JOSE NAVARRO, a/k/a "Fred," * OF PLEA
*
Defendant. *

This matter came before the court for a change of plea hearing on Wednesday, November 15, 2006. The Defendant, Jose Navarro, appeared in person and by his counsel, Kenneth Tschetter, while the United States appeared by its Assistant United States Attorney, John Haak.

The defendant consented in open court to the change of plea before a United States magistrate judge. This court finds that the defendant's consent was voluntary and upon the advice of counsel. The government also consented to the plea hearing before a magistrate judge.

Defendant has reached a plea agreement with the government wherein he intends to plead guilty to Count 1 of the Indictment. The defendant is charged in Count 1 with Conspiracy to Distribute and Possess with the Intent to Distribute a Controlled Substance in violation of 21 U.S.C. § 841(a)(1) and 846. At the hearing, the defendant was advised of the nature of the charges to which the defendant would plead guilty and the maximum penalties applicable, specifically: mandatory minimum 10 years imprisonment; maximum life imprisonment; a \$4 million fine; or both; 5 years supervised release; 5 additional years imprisonment if supervised release is revoked; and a \$100 special assessment.

Upon questioning the defendant personally in open court, it is the finding of the court that the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, and that his plea of guilty to Count 1 of the Indictment is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. It is, therefore, my report and recommendation that the guilty plea to Count 1 of the Indictment be accepted and the defendant be adjudged guilty of that offense.

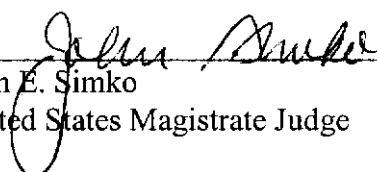
Further, the government has agreed to move to dismiss Count 2 of the Indictment upon imposition of sentencing. It is recommended such a motion to dismiss be granted at that time.

NOTICE TO PARTIES

The parties have ten (10) days after service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. Failure to file timely objections will result in the waiver of the right to appeal questions of fact. Objections must be timely and specific in order to require de novo review by the District Court. Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990); Nash v. Black, 781 F.2d 665 (8th Cir. 1986).

Dated this 15 day of November, 2006.


BY THE COURT:



John E. Simko
United States Magistrate Judge

ATTEST:

JOSEPH HAAS, Clerk

By  _____, Deputy
(SEAL)